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EXAMINER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/662,955
Filing Date: September 15, 2003
Appellant(s): HUSAIN ET AL.

MAILED
DEC 11 2007
GROUP 2800

Jeffrey C. Wood
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 11, 2007 appealing from the Office action mailed April 11, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on June 11, 2007 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6144992	Turpin	5/9/1997
6983326	Vigue	8/2/2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6, 8, 9-14, 16, 17-22, 24, and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by **Turpin et al**, (US Patent No. 6,144,992) hereinafter **Turpin**.

As per Claim 1, Turpin discloses a method comprising: receiving software at one or more remote computer systems (See Turpin Abstract; Lines 5-13, Also see Col 7; Lines 12-19); And

Receiving instructions for installing the software at the one or more remote computer systems (See Turpin Col 3&4; Lines 65-67: 1-7), Wherein

The instructions for installing the software comprise one or more messages in a portable format (See Turpin Col 5; Lines 22-25, "**Packet of data received...**"). Wherein "**Packet of data**" is the "**portable format**" as claimed.

Translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems (See Turpin Abstract; Lines 5-15, and Also See Turpin Col 5; Lines 19-25, "**Processed the data...data is to be processed**") Wherein "**Processed the data**" is "**translating the instructions**", Thereby

Generating executable instructions; and executing the executable instructions to install the software at each of the one or more remote computer systems (See Turpin Abstract; Lines 16-19 and Also Col 9; Lines 30-40).

As per Claim 2, the rejection of claim 1 is incorporated. Turpin discloses that the instructions are sent and received using peer-to-peer message passing between a first computer system, the one or more remote computer systems, and one or more intermediary computer systems (See Turpin Col 3&4; Lines 65-67: 1-7, Also see Col 7; lines 12-29, "**Data...from any computer**"; Also see Abstract; lines 8-13, "transfer data ... first system over computer network; Also see Col 7 & Fig 2; Lines 5-9 Transferring data to and from the **network server** and from and to individual computers on network). Wherein "**Data**" is a "**message**". Wherein "network server" mentioned is the "intermediate computer" claimed.

As per Claim 3, the rejection of claim 1 is incorporated. Claim 3 is rejected under the same reason set forth in connection of the rejection of claim 2 and further Turpin discloses that software are sent and received (See Turpin Col 1, lines 10-14).

As per Claim 4, the rejection of claim 1 is incorporated. Turpin discloses receiving user input to record the instructions for installing the software (See Turpin Col 3&4; lines 65-67: lines 1-7, "***upon user command***"). Wherein "***upon user command***" is the "**receiving user input to record the instructions**".

As per claim 5, the rejection of claim 4 is incorporated. Claim 5 is rejected under the same reason set forth in connection of the rejection of claim 4.

As per claim 6, the rejection of claim 1 is incorporated. Turpin discloses the receiving of user input to select the one or more remote computer systems from a plurality of available computer systems (See Turpin Col 7, lines 19-25, "***transferring to one or all of slave computers***") Wherein "***transferring to one or all of slave computers***" is the "**receiving of user input to select one or more remote computer systems**" as claimed.

As per claim 8, the rejection of claim 1 is incorporated. Turpin discloses that the instructions are received through a distributed computing infrastructure. (See Col 3-4: lines 66-67; lines 1-3, "**Over a network**"). Wherein "**Over a network**" is a "**distributed computing infrastructure**" as claimed.

Claims 9-14, and 16 are computer-accessible memory medium claims corresponding to the method claim 1-6, and 8 respectively and are rejected under the same reason as set forth in connection of the rejection of claim 1-6, and 8 respectively and further Turpin discloses that the program instructions are computer-executable (See Turpin Col 5, lines 22-25 , "processed data received"). Wherein "**processed data received**" is the "**computer-executable instruction**".

Claim 17 is a system claim corresponding to the method of claim 1 and rejected under the same reason as set forth in connection of the rejection of claim 1 and further Turpin discloses a computer comprising of a CPU and memory (See Turpin Col 6; Lines 38-45, See Figure 1). Turpin also discloses first computer system and one or more remote computer systems are communicatively coupled via a network. (See Turpin Fig. 2).

As per claim 18, the rejection of claim 17 is incorporated. Claim 18 is a system claim corresponding to the method of claim 2 and rejected under the same reason as set forth in connection of the rejection of claim 2.

As per claim 19, the rejection of claim 17 is incorporated. Claim 19 is a system claim corresponding to the method of claim 3 and rejected under the same reason as set forth in connection of the rejection of claim 3.

As per claim 20, the rejection of claim 17 is incorporated. Claim 20 is a system claim corresponding to the method of claim 4 and rejected under the same reason as set forth in connection of the rejection of claim 4.

As per claim 21, the rejection of claim 20 is incorporated. Claim 21 is a system claim corresponding to the method of claim 5 and rejected under the same reason as set forth in connection of the rejection of claim 5.

As per claim 22, the rejection of claim 17 is incorporated. Claim 22 is a system claim corresponding to the method of claim 6 and rejected under the same reason as set forth in connection of the rejection of claim 6.

As per claim 24, the rejection of claim 17 is incorporated. Claim 24 is a system claim corresponding to the method of claim 8 and rejected under the same reason as set forth in connection of the rejection of claim 8.

As per claim 25 and 26, the rejection of claim 1 is incorporated. Turpin discloses that the instructions (Software) are sent and received using peer-to-peer message passing between a first computer system and the one or more remote computer systems (See Turpin Col 7; Lines; 3-29).

As per claims 27 and 28, the rejection of claim 9 is incorporated. Claims 27 and 28 is a computer-accessible memory medium claim corresponding to the method of claims 25 and 26 and are rejected under the same reason as set forth in connection of the rejection of claims 25 and 26.

As per claim 29 and 30, the rejection of claim 17 is incorporated. Claims 29 and 30 are system claim corresponding to the method of claims 25 and 26 and are rejected under the same reason as set forth in connection of the rejection of claims 25 and 26.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7, 15, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turpin, (US Patent No. 6,144,992) hereinafter **Turpin**, in view of **Vigue** et al, (US Patent No. 6,983,326) hereinafter **Vigue**.

As per claim 7, the rejection of claim 1 is incorporated. Turpin did not disclose that the portable format comprises XML, and wherein the messages comprise XML messages. However, Vigue in an analogous art discloses the teaching of utilizing XML in messages (See Vigue Col 8; Lines 14-19, "**packet format....XML format**"). Wherein "**packet format**" is "**a message**" as claimed. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention was made to incorporate the teaching of Turpin into the method of Vigue. The modification would have been obvious because one of the ordinary skill in the art would want to be able to utilize the messages format to provide the mark-up of sections in the message. This would allow for the flexibility in the displaying and presentation of data.

As per Claim 15, the rejection of claim 9 is incorporated. Claim 15 is a computer-accessible memory medium claim corresponding to the method of claim 7 and rejected under the same reason as set forth in connection of the rejection of claim 7

As per Claim 23, the rejection of claim 17 is incorporated. Claim 23 is a system claim corresponding to the method of claim 7 and rejected under the same reason as set forth in connection of the rejection of claim 7.

(10) Response to Argument

5. I (Issue): Does Turpin reference teach or suggest the claim limitation "translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer system, thereby generating executable instructions"?

R (Rule): 35 USC § 102 (b)

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

A(Analysis): In Claims 1, 9, and 17, Appellant argues that the Turpin reference fails to disclose translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions.

Respondent respectfully disagrees.

Turpin discloses a method for installing and/or distributing of software from one computer system to one or more other computer systems (See Turpin Col 1; Lines 10-15).

Turpin carry out the invention by having two programs (IMGBLSTR - which is the primary control program (See Turpin; Lines 45-50) and IMGSLAVE - used for listening for data from the IMGBSLTR program (See Turpin; Lines 45-50)). The IMGBLSTR broadcasts the data to the IMGSLAVE program (See Col 5; Lines 10-15, See Col 7; Lines 30-35). Figure 1 of Turpin discloses the master (101) and slave (102a...102n) computer connected in a Wide Area Network and LAN (See Col 6; Lines 38-67).

The IMGSLAVE open a communication socket on the network, and listen for data received on that socket, then it processes the data received on the socket. Each of packet of data received on the socket contains a command field which tells IMGSLAVE what the data contained in the packet is used for and how the data is to be processed (See Turpin; Col 5; Lines 19-25).

in the command field are:

Command	Performed by	Function
Drive Geometry	Master	Compare geometry of master image with slave
RSVP	Slave	Response to master to indicate participation in download
Conform Download	Master	Acknowledgment that slave has joined the process and that master knows slave is ready
Sector Data	Master	Write data to receive buffer
➡ Sector Data & Flush	Master	Write data to receive buffer and flush data to disk
Skip Track	Master	No data in current track - Skip this track
Resend Request	Slave	Slave missed data - Please resend
End of Data	Master	Master is finished sending data - Ready for a slave request
Done	Master	Image complete - Exit program
Disconnect	Slave	Slave response to master "done" command - Slave disconnecting
Disconnect Acknowledge	Master	Master acknowledges slave disconnect

(See Turpin Col 5)

One of the command/operation that is carried out is the operation "Flush data to disk" (See Turpin Col 5). Turpin send data in form of "partition to be imaged" / binary data (See Col 1; Lines 1-10, i.e. mirroring the binary data, See Turpin; Lines 55-63, i.e. operator specify the partition to be imaged...send drive data to slave computer) to slave/target computer. The data is then flush to a hard disk on the target computer with

the command "flush data" (See Col 9; Lines 5-10, i.e. flush...indicate flush to disk, See Col 10; lines 45-47, i.e. command to flush the data...write to harddrive). The feature of Turpin invention can be seen in (See Turpin ; Figure 4), where the slave connected to the master (See Figure 4; i.e. 401- hook-up with master), down load the data (See Figure 4 – 404 – download data), then flush the data to disk as discloses above (See Figure 4; i.e. 405- flush complete track).

Although Turpin does not use the exact phraseology "translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer systems, thereby generating executable instructions", in Turpin, the packet is being interpreted as the portable format. The packet contain command field as listed in the table above (See Turpin Col 5). The packet is received by IMGSLAVE, which reside on the slave computer which correlate to the remote computer as discussed above and in Figure 1 of Turpin. The packet send from a master and process, with command field "flush to disk" in the packet, which write the data a slave computer - which correlate to the limitation translating the instruction from portable format to an executable format...thereby generating executable instruction. With the flush of data to disk, the data received in Turpin is then written onto the slave harddisk in the form of binary as discloses above. The binary data that reside on the slave after the flush is interpreted as executable format/instruction.

Further, Turpin disclosed a number of patents which it incorporated by reference in its entirety (See Col 1; lines 55-61). Specifically, reference Platt (U.S. Patent No. 5,421,009) , disclosed for understanding of the installation of software on a

remote computer. Platt discloses that a single stream (hence portable) of data are send over a network to a remote computer (See Abstract), at the remote computer, file are extracted for installation (hence translation to executable because it start as a single data stream from main computer, ended with extraction at the receiving computer - considered as translation) at the remote computer (See Abstract, Col 2; Lines 33-42). Further detail of the operation of installation can be seen in Platt Figure 8 (i.e. combine files into a data stream...send data stream to remote...extract files from data stream...update files, and Platt Col 6; Lines 57 through Col 7; Lines 15).

(C) Conclusion : The Turpin reference discloses translating the instructions for installing the software from the portable format to an executable format at each of the one or more remote computer system, thereby generating executable instructions.

6. I (Issue): Does Turpin reference teach or suggest the claim limitation "receiving user input to record the instructions for installing the software"?

R (Rule): 35 USC § 102 (b)

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

A(Analysis): In Claims 4, 12, and 20, Appellant argues that the Turpin reference fails to disclose receiving user input to record the instructions for installing the software.

Respondent respectfully disagrees.

Turpin discloses that the installing of computer and computer data files on more than one computer simultaneously upon user command (See Turpin Col 3&4; lines 65-67: lines 1-7, "upon user command"). The commands in Turpin are entered through a command line (See Col 5; Lines 15-20, i.e. operator entered on the command line). Such command can be seen in (See Col 9; Lines 45-63), such as requested information are entered through command line...such that the operator specify the partition to be imaged, the operator specify whether he want to upload or download, the operator providing the name of the image file...including the complete path. The data that the operator entered / input in the command line are the user input to record instruction for installing the software. Because the data that the user input includes the selection mode of operation of in the installation (See Col 5; Lines 10-19, operator entered on command line), the file to be imaged (See Col 9; Lines 45-63, i.e. specify partition to be imaged) - entering data to command line, the command line record the input into the computer therefore the above correlated to receiving user input to record the instructions for installing the software.

(C) Conclusion : The Turpin reference discloses receiving user input to record the instructions for installing the software.

7. **I (Issue):** Does Turpin reference teach or suggest the claim limitation "wherein the user input comprises instructions to send software to an additional remote computer system and install the software on additional remote computer system"?

R (Rule): 35 USC § 102 (b)

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

A(Analysis): In claims 5, 13, and 21, Appellant argues that the Turpin reference fails to disclose wherein the user input comprises instructions to send software to an additional remote computer system and install the software on additional remote computer system.

Respondent respectfully disagrees.

Turpin discloses that a system operator can transfer data stored on a single computer system to all or some of the computer system connected to a first computer over a network (See Turpin; Abstract). The installation can function upon user command under client/server model or a peer-to-peer model of operation (See Turpin Col 3&4; lines 65-67: lines 1-7, "upon user command"). Turpin discloses a master computer transfer data from its disk to one or all of the other computers on a network, designated as slave (See Col 6; Lines 38 through Col 7; Lines 2, See Figure 1 (101 – master ... 102a... 102n is the slaves computer). Because Turpin discloses that the operator can transfer to all or some of the computer system, the operator have the control/input capabilities as discloses above which correlate to instructions to send software to an additional remote computer system and install the software on additional remote computer system.

(C) Conclusion : The Turpin reference discloses wherein the user input comprises instructions to send software to an additional remote computer system and install the software on additional remote computer system.

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8. I (**Issue**): Does Turpin reference teach or suggest the claim limitation "receiving user input to select the one or more remote computer systems from a plurality of available computer system"?

R (Rule): 35 USC § 102 (b)

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

A(Analysis): In Claims 6, 14, and 22, Appellant argues that the Turpin reference fails to disclose receiving user input to select the one or more remote computer systems from a plurality of available computer system.

Respondent respectfully disagrees.

Turpin discloses that a system ***operator can transfer data stored on a single computer system to all or some of the computer system*** connected to a first computer over a network (See Turpin; Abstract). The installation can function upon user command under client/server model or a peer-to-peer model of operation (See Turpin Col 3&4; lines 65-67: lines 1-7, "upon user command"). Turpin discloses a master computer transfer data from its disk to one or all of the other computers on a network, designated as slave (See Col 6; Lines 38 through Col 7; Lines 2, See Figure 1 (101 – master ... 102a...102n is the slaves computer). Because the operator can transfer data to some or all, the Operator have the abilities to select the computer systems to transfer the software to. Turpin further discloses the reset of those computer system affected in the process (See Col 9; Lines 40-45, i.e. clean-up....reset all affected computer). Therefore, Turpin discloses receiving user input to select the one or more remote computer systems from a plurality of available computer system.

(C) Conclusion : The Turpin reference discloses receiving user input to select the one or more remote computer systems from a plurality of available computer system.

9. **I (Issue):** Would it have been obvious to one in the ordinary skill in the art at the time of the invention was made to combine Turpin and Vigue for the teaching of the limitation "wherein the portable format comprise extensible markup language (XML), and wherein the message comprise XML messages"?

R (Rule): 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

A(Analysis): In Claims 7, 15, and 23, Appellant argues that it is not obvious to one in the ordinary skill in the art at the time of the invention was made to combine Turpin and Vigue for the teaching of the limitation "wherein the portable format comprise extensible markup language (XML), and wherein the message comprise XML messages".

Respondent respectfully disagrees.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or *in the knowledge generally available to one of ordinary skill in the art*. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, although motivation for combining Turpin and Vigue are not disclosed in the references themselves, the knowledge generally available to one of ordinary skill in the art at the time of the invention would recognize that XML has the abilities to define structure, layout, and other information as markup in the combining of text and information, allowing the user to define their own tags. One of the ordinary skill in the art at the time of the invention would want to utilize the message format in XML to provide mark-up of section in message allowing the flexibility in displaying and presentation of data.

(C) Conclusion : It would have been obvious to one in the ordinary skill in the art at the time of the invention was made to combine Turpin and Vigue for the teaching of the limitation "wherein the portable format comprise extensible markup language (XML), and wherein the message comprise XML messages".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

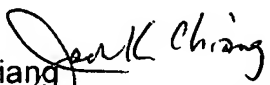
For the above reasons, it is believed that the rejections should be sustained.

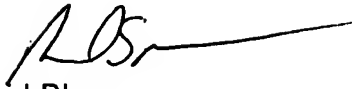
Respectfully submitted,

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